

September 8, 2015

*VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED*

Tri-Star Packaging, Inc.  
Attention: Andrew Chen, President/CEO  
20668 Corsair Boulevard  
Hayward, California 94545

Andrew Chen  
Agent for Service of Process  
Tri-Star Packaging, Inc.  
20668 Corsair Boulevard  
Hayward, California 94545

Global Packaging Supply, Inc.  
Attention: Rick Chen, President/CEO  
20628 Corsair Boulevard  
Hayward, California 94545

Dan Chen  
Agent for Service of Process  
Global Packaging Supply, Inc.  
20628 Corsair Boulevard  
Hayward, California 94545

International Food Packaging, Inc.  
Attention: Rick Chen, President/CEO  
20638 Corsair Boulevard  
Hayward, California 94545

Dan Chen  
Agent for Service of Process  
International Food Packaging, Inc.  
20638 Corsair Boulevard  
Hayward, California 94545

**Re: Notice of Violation and Intent to File Suit under the Clean Water Act**

Dear Mssrs.:

I am writing on behalf of San Francisco Baykeeper ("Baykeeper") and the Plastic Pollution Coalition ("PPC"), a project of the Earth Island Institute, to give notice that Baykeeper and PPC intend to file a civil action against Tri-Star Packaging, Inc. ("Tri-Star"), Global Packaging Supply, Inc. ("GPS"), and International Food Packaging, Inc. ("IFP") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at Tri-Star's, GPS's, and IFP's facilities housed in a shared warehouse, located at 20628-20668 Corsair Boulevard, Hayward, California (collectively, the "Facility").

Baykeeper is a non-profit public benefit corporation organized under the laws of California, with its office in Oakland, California. Baykeeper's purpose is to protect and enhance the water quality and natural resources of San Francisco Bay, its tributaries, and other waters in the Bay Area, for the benefit of its ecosystems and communities. Baykeeper has over three thousand members who use and enjoy San Francisco Bay and other waters for various recreational, educational, and spiritual purposes. Baykeeper's members' use and enjoyment of these waters are negatively affected by the pollution caused by Tri-Star's, GPS's, and IFP's operations.



Pollution hotline: 1 800 KEEP BAY  
[www.baykeeper.org](http://www.baykeeper.org)

1736 Franklin Street, Suite 800  
Oakland, CA 94612  
(510) 735-9700

## **I. THE LOCATION OF THE ALLEGED VIOLATIONS**

### **A. The Facility**

Tri-Star operates a plastic bag manufacturing facility located at 20668 Corsair Boulevard, Hayward, CA. GPS operates a plastic packaging products manufacturing facility located at 20628 Corsair Boulevard, Hayward, CA. IFP operates a food carry-out packaging manufacturing facility located at 20638 Corsair Boulevard, Hayward, CA. Although there are separate addresses for each company, they share the same site and warehouse located in Hayward. At the Facility, Tri-Star, GPS, and IFP manufacture plastic bags, packaging, and food containers using pre-production plastic pellets. Pre-production plastic pellets are transported to the Facility primarily by rail. Potential pollutants from the Facility include pre-production plastic pellets and other pollutants. Stormwater from the Facility discharges, via the Hayward storm sewer system and/or freshwater tributaries, to San Francisco Bay.

### **B. The Affected Water**

San Francisco Bay is a water of the United States. The CWA requires that water bodies such as San Francisco Bay meet water quality objectives that protect specific "beneficial uses." The beneficial uses of San Francisco Bay and its tributaries include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated stormwater from the Facility adversely affects the water quality of the San Francisco Bay watershed and threatens the beneficial uses and ecosystem of this watershed, which includes habitat for threatened and endangered species.

## **II. THE FACILITY'S VIOLATIONS OF THE CLEAN WATER ACT**

It is unlawful to discharge pollutants to waters of the United States, such as San Francisco Bay, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Industrial Stormwater Permit authorizes certain discharges of stormwater, conditioned on compliance with its terms.

As of the date of this letter, Tri-Star, GPS, and IFP have not submitted Notices of Intent ("NOIs") to be authorized to discharge industrial stormwater from the Facility under the Industrial Stormwater Permit. Information available to Baykeeper and PPC indicates the Tri-Star, GPS, and IFP should be permitted under the Industrial Stormwater Permit, and that stormwater discharges from the Facility have violated several terms of the Industrial Stormwater Permit and the CWA. The Facility lacks NPDES permit authorization for any discharges of pollutants into waters of the United States.



#### **A. Failure to Obtain Permit Coverage**

The CWA and its implementing regulations require any person who discharges or proposes to discharge pollutants, including stormwater discharges associated with industrial activity, into the waters of the United States to submit an NPDES application. 33 U.S.C. § 1342(p)(2)(b); 40 C.F.R. §§ 122.21(a), 122.26(a)(ii). Dischargers of stormwater associated with industrial activity are required to apply for an individual permit, apply through a group application, or seek coverage under a promulgated stormwater general permit such as the Industrial Stormwater Permit. 40 C.F.R. § 122.26(c)(1). To discharge stormwater lawfully in California, industrial dischargers must secure coverage under the Industrial Stormwater Permit and comply with its terms or obtain and comply with an individual NPDES permit. Industrial Stormwater Permit, Section I.A. (Findings 8, 12).

Section XVIII of the Industrial Stormwater Permit specifically covers facilities that handle “Plastic Materials,” which are defined as “virgin and recycled plastic resin pellets, powders, flakes, powdered additives, regrind, dust, and other similar types of pre-production plastics with the potential to discharge or migrate off-site.” Industrial Stormwater Permit, Section XVIII.A., Attachment C. Any Plastic Materials that are discharged or that migrate off-site constitute an illicit discharge in violation of the Industrial Stormwater Permit. *Id.*, Section XVIII. The State Water Resources Control Board (“State Board”) has recognized that Plastic Materials that wash into stormwater drains can move to the waters of the United States and contribute to the growing problem of plastic debris in inland and coastal waters. *Id.*, Fact Sheet p. 69.

Baykeeper and PPC have searched the State Board’s database, Storm Water Multiple Application and Report Tracking System (“SMARTS”), and Tri-Star, GPS, and IFP have failed to seek coverage under the Industrial Stormwater Permit. Thus, Tri-Star, GPS, and IFP have been discharging stormwater associated with industrial activity without a permit. Tri-Star’s, GPS’s, and IFP’s failure to obtain permit coverage violates and will continue to violate the CWA and the Industrial Stormwater Permit each and every day Tri-Star, GPS, and IFP discharge stormwater associated with industrial activity without a permit. Baykeeper and PPC allege that Tri-Star, GPS, and IFP have discharged stormwater containing excessive levels of pollutants from the Facility to San Francisco Bay during at least every significant local rain event over 0.1 inches in the last five (5) years.<sup>1</sup> Attachment 1 compiles all dates in the last five (5) years when a significant rain event occurred. Tri-Star, GPS, and IFP are subject to civil penalties for each violation of the Industrial Stormwater Permit and the CWA within the past five (5) years.

#### **B. Failure to Implement Mandatory Minimum BMPs**

The Effluent Limitations of the Industrial Stormwater Permit prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate

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<sup>1</sup> Significant local rain events are reflected in the rain gauge data available at: <http://www.ncdc.noaa.gov/cdo-web/search>.

PPC is a global alliance of individuals, organizations, and businesses working towards a world free of plastic pollution and its toxic impacts. With its work, PPC seeks to put plastic pollution at the forefront of global social, environmental, and political discourse. PPC's members work, recreate, and live on or near the San Francisco Bay ("Bay"). Several have professional interests in the Bay, including studying and filming wildlife. The relief sought in this case would provide redress for these injuries. Additionally, because these injuries are being caused by pollution of waters of the United States and failure to adequately monitor and report discharges of pollutants from the Facility, the injuries fall within the zone of interests protected by the CWA.

Earth Island Institute is a not-for-profit, public interest, membership organization that supports people who are creating solutions to protect our shared planet. Earth Island Institute's headquarters are located in Berkeley, California, which is adjacent to the San Francisco Bay. Earth Island Institute acts as an incubator for start-up environmental projects, giving crucial assistance to groups and individuals with new ideas for promoting ecological sustainability, including the PPC. Members of PPC are also members of Earth Island Institute.

This letter addresses Tri-Star's, GPS's, and IFP's unlawful discharge of pollutants from the Facility via stormwater into San Francisco Bay. Specifically, Baykeeper's and PPC's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ (the "Industrial Stormwater Permit").

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his or her intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur. As required by section 505(b), this Notice of Violation and Intent to File Suit provides notice to Tri-Star, GPS, and IFP of the violations that have occurred and which continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, Baykeeper and PPC intend to file suit in federal court against Tri-Star, GPS, and IFP under CWA section 505(a) for the violations described more fully below.

During the 60-day notice period, Baykeeper and PPC are willing to discuss effective remedies for the violations noticed in this letter. We suggest that Tri-Star, GPS, and IFP contact us within the next twenty (20) days so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, and service of the complaint shortly thereafter, even if discussions are continuing when the notice period ends.

with the application of best available technology economically achievable (“BAT”) for toxic pollutants<sup>2</sup> and best conventional pollutant control technology (“BCT”) for conventional pollutants.<sup>3</sup> Industrial Stormwater Permit, Section X.H.

In 2007, the California Legislature passed the Nurdles Law (Cal. Water Code section 13367), which establishes mandatory minimum best management practices (“BMPs”) for facilities that manufacture, handle, and/or transport pre-production plastic. These BMPs include: containment systems at all onsite storm drain discharge locations; measuring to prevent discharge of plastic pellets during loading and unloading; storage of pellets in sealed containers; installation of capture devices under transfer valves and devices during loading and unloading; and vacuum or vacuum-type systems for quick cleanup of fugitive plastic pellets. Cal. Water Code § 13367(e)(1)-(5). These BMPs constitute BAT/BCT standards for controlling pre-production plastic pollution. The State Board was required to implement the provisions of the Nurdles Law by January 1, 2009. *Id.* § 13367(g). Section XVIII of the Industrial Stormwater Permit specifically requires facilities that handle “Plastic Materials” to implement the mandatory minimum BMPs in the Nurdles Law.

Based on Baykeeper’s observations and investigation, Tri-Star, GPS, and IFP have not developed and implemented the mandatory minimum BMPs at the Facility, which constitute BAT/BCT, as required by Section XVIII of the Industrial Stormwater Permit. Tri-Star’s, GPS’s, and IFP’s failure to develop and/or implement adequate pollution controls to meet BAT/BCT at the Facility violates and will continue to violate the CWA and the Industrial Stormwater Permit each and every day Tri-Star, GPS, and IFP operate without implementing the required BMPs. This failure to implement the mandatory minimum BMPs in the Industrial Stormwater Permit has led to the discharge of stormwater that contains preproduction plastic pellets. Baykeeper and PPC allege that Tri-Star, GPS, and IFP have discharged stormwater containing pre-production plastic pellets from the Facility to San Francisco Bay during at least every significant local rain event over 0.1 inches in the last five (5) years. *See* Attachment 1. Tri-Star, GPS, and IFP are subject to civil penalties for each violation of the Industrial Stormwater Permit and the CWA within the past five (5) years.

### **C. Violations of Discharge Prohibitions and Receiving Water Limitations**

Pursuant to section 13243 of the California Water Code, the State Board has the authority to specify certain conditions or areas where the discharge of waste, or certain types of waste, is prohibited (*i.e.*, “Discharge Prohibitions”). Discharge Prohibition III.C. in the Industrial Stormwater Permit prohibits stormwater discharges that contain pollutants that cause or threaten to cause pollution, contamination, or nuisance. Discharge Prohibition III.D. of the Industrial Stormwater Permit further prohibits

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<sup>2</sup> BAT is defined at 40 C.F.R. § 442.23. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

<sup>3</sup> BCT is defined at 40 C.F.R. § 442.22. Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.



stormwater discharges that violate the Discharge Prohibitions in the Water Quality Control Plan for the San Francisco Bay Basin ("Basin Plan").<sup>4</sup>

Discharge Prohibition 6 in the Basin Plan prohibits "[a]ll conservative toxics and deleterious substances [to waters of the Basin] above those levels which can be achieved by a program acceptable to the Regional Water Board." The Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") has previously found that the discharge of pre-production plastic is a violation of Discharge Prohibition 6 because "plastic pellets are deleterious in that fish, birds, and other marine animals eat the pellets but are unable to digest them, thus starving to death. . . . The plastic pellets will take decades or centuries to fully degrade and may concentrate and transport other persistent, organic pollutants that may have toxic effects on plants, fish and wildlife." Cleanup and Abatement Order No. R2-2011-033.

Discharge Prohibition 7 in the Basin Plan prohibits the discharge of "[r]ubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would eventually be transported to surface waters, including flood plain areas." The Regional Board has previously found that the discharge of pre-production plastic is a violation of Discharge Prohibition 7 because "plastic pellets are a solid waste in that they are associated with human habitation from manufacturing operations in accordance with California Water Code section 13050(d)." Cleanup and Abatement Order No. R2-2011-033.

In addition, the Industrial Stormwater Permit contains Receiving Water Limitations that require discharges to ensure that stormwater discharges do not "adversely impact human health or the environment" or cause or contribute to an exceedance of applicable water quality standards ("WQS"). Industrial Stormwater Permit, Section VI. Applicable WQS for San Francisco Bay and its tributaries are set forth in the Basin Plan, including, but not limited to, the following:

- Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.
- Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.

Baykeeper and PPC allege that Tri-Star's, GPS's, and IFP's stormwater discharges have violated the above-referenced Discharge Prohibitions and Receiving

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<sup>4</sup> The Basin Plan is published by the San Francisco Bay Regional Water Quality Control Board at: [http://www.waterboards.ca.gov/sanfranciscobay/basin\\_planning.shtml#2004basinplan](http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2004basinplan) (Last accessed on 8/31/15).

Water Limitations in the Industrial Stormwater Permit. These allegations are based on Baykeeper's observations and investigation of the Facility, the failure to implement mandatory minimum BMPs for Plastic Materials, and the resulting discharge of stormwater that contains preproduction plastic pellets. Baykeeper and PPC allege that Tri-Star, GPS, and IFP have discharged stormwater in violation of the Discharge Prohibitions and Receiving Water Limitations of the Industrial Stormwater Permit during at least every significant local rain event over 0.1 inches in the last five (5) years. *See* Attachment 1. Tri-Star, GPS, and IFP are subject to penalties for each violation of the Industrial Stormwater Permit and the CWA within the past five (5) years.

**D. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan or Monitoring Program.**

The Industrial Stormwater Permit requires dischargers of industrial stormwater to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP") at the time industrial activities begin. Industrial Stormwater Permit, Sections I.I. (Findings 54), X.B. The SWPPP must include, among other requirements: a site map, a list of significant materials handled and stored at the site, a description and assessment of all potential pollutant sources, a description of the BMPs that will reduce or prevent pollutants in stormwater discharges, and specification of BMPs designed to reduce pollutant discharge to BAT and BCT levels. *Id.*, Section X. The SWPPP and site maps must be assessed annually and revised as necessary to ensure accuracy and effectiveness. *Id.*, Section I.J. (Finding 55), X.B.1.

The Industrial Stormwater Permit further requires facility operators to monitor and sample stormwater discharges to ensure that the facility is complying with the terms of the permit. *Id.*, Sections I.J. (Findings 55-56), XI. Facility operators must conduct ongoing visual observations of stormwater and non-stormwater discharges and record responsive measures taken to eliminate unauthorized non-stormwater discharges and to reduce or prevent pollutants in stormwater and authorized non-stormwater discharges. *Id.*, Section XI.A. In addition, facility operators must collect samples of stormwater discharges from all locations where industrial stormwater may be discharged from the facility. *Id.*, Sections XI.B.4-5.

Based on information available to Baykeeper and PPC, Tri-Star, GPS, and IFP have failed to prepare and/or implement adequate SWPPPs or comply with the monitoring requirements of the Industrial Stormwater Permit. Tri-Star, GPS, and IFP have not obtained permit coverage under the Industrial Stormwater Permit, and there is no evidence that any SWPPPs or other monitoring data have been submitted to the State Board via SMARTS. Accordingly, Tri-Star, GPS, and IFP have violated the CWA each and every day that they have failed to develop and/or implement adequate SWPPPs or monitoring programs that meet the requirements of the Industrial Stormwater Permit, and will continue to be in violation every day until they do so. Tri-Star, GPS, and IFP are subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring within the past five (5) years.

### **III. PERSONS RESPONSIBLE FOR THE VIOLATIONS.**

Tri-Star Packaging, Inc., Global Packaging Supply, Inc., and International Food Packaging, Inc. are the persons responsible for the violations at the Facility described above.

### **IV. NAMES AND ADDRESSES OF NOTICING PARTIES**

San Francisco Baykeeper  
1736 Franklin Street, Suite 800  
Oakland, CA 94612  
(510) 735-9700

Plastic Pollution Coalition,  
A Project of Earth Island Institute  
2150 Allston Way #460  
Berkeley, CA 94704  
(510) 859-9100

### **V. COUNSEL**

Baykeeper is represented by the following counsel in this matter, to whom all communications should be directed:

Nicole C. Sasaki, Associate Attorney  
George Torgun, Managing Attorney  
San Francisco Baykeeper  
1736 Franklin Street, Suite 800  
Oakland, CA 94612  
(510) 735-9700

Nicole C. Sasaki: (510) 735-9700 x110, [nicole@baykeeper.org](mailto:nicole@baykeeper.org)  
George Torgun: (510) 735-9700 x105, [george@baykeeper.org](mailto:george@baykeeper.org)

PPC is represented by the following counsel in this matter, to whom all communications should be directed:

Rachel S. Doughty, Esq.  
Greenfire Law  
1202 Oregon Street  
Berkeley, CA 94702

### **VI. REMEDIES.**

Baykeeper and PPC intend, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against Tri-Star, GPS, and IFP for the above-referenced violations. Baykeeper and PPC will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, Baykeeper and PPC will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against Tri-Star, GPS, and IFP in this action. The CWA



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imposes civil penalty liability of up to \$37,500 per day per violation for violations occurring after January 12, 2009. *Id.* Baykeeper and PPC will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

As noted above, Baykeeper and PPC are willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me or George Torgun to initiate these discussions.

Sincerely,



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Nicole C. Sasaki  
Associate Attorney  
San Francisco Baykeeper

Cc:

Gina McCarthy, Administrator U.S. Environmental Protection Agency Mail Code: 1101A 1200 Pennsylvania Avenue, N.W. Washington, DC 20460	Bruce Wolfe, Executive Officer Regional Water Quality Control Board San Francisco Bay Region 1515 Clay Street, Suite 1400 Oakland, CA 94612
Jared Blumenfeld, Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA 94105	Thomas Howard, Executive Director State Water Resources Control Board 1001 I Street Sacramento, CA 95814

**Attachment 1: Alleged Dates of Exceedances by  
Tri-Star Packaging, Inc., Global Packaging Supply, Inc.,  
and International Food Packaging, Inc.,  
September 9, 2010 to September 8, 2015**

Days with precipitation one-tenth of an inch or greater, as reported by NOAA's National Climatic Data Center; Hayward Air Terminal, CA station, GHCND:USW00093228, when a stormwater discharge from the Facility is likely to have occurred. <http://www.ncdc.noaa.gov/cdo-web/search>

<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
10/23	1/2	1/20	1/5	2/2	2/6
10/24	1/13	1/21	2/7	2/6	2/7
10/29	1/30	1/22	2/19	2/8	2/8
11/7	2/16	1/23	3/7	2/9	2/28
11/19	2/17	2/7	4/1	2/26	4/7
11/20	2/18	2/13	4/4	2/28	4/25
11/21	2/19	2/29	9/21	3/5	6/10
11/22	2/24	3/1	11/19	3/26	
11/23	2/25	3/13	11/20	3/29	
11/27	3/6	3/14	12/6	3/31	
12/5	3/13	3/16		4/1	
12/8	3/15	3/24		4/4	
12/14	3/18	3/25		4/25	
12/17	3/19	3/27		9/25	
12/18	3/20	3/31		10/25	
12/19	3/22	4/10		10/31	
12/22	3/23	4/12		11/13	
12/25	3/24	4/13		11/20	
12/28	3/25	6/4		11/22	
	3/26	10/22		11/30	
	5/14	11/1		12/2	
	5/16	11/9		12/3	
	5/17	11/17		12/5	
	5/31	11/21		12/6	
	6/4	11/28		12/11	
	6/28	11/30		12/12	
	10/3	12/1		12/14	
	10/4	12/2		12/15	
	10/6	12/5		12/16	
	10/10	12/17		12/17	
	11/5	12/22		12/19	
	11/19	12/23			
	11/20	12/25			